



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

DIVISION OF RELIABILITY
AND SECURITY

IN THE MATTER OF ALLEGATIONS OF VIOLATIONS
OF LAW BY J.F. KIELY CONSTRUCTION CO.

ORDER

) DOCKET NO. GS06010009K

SERVICE LIST ATTACHED

BY THE BOARD:

This matter has been open to the Board following an investigation of possible violations of the Board's One-Call Damage Protection System for the protection of underground facilities associated with work performed by J.F. Kiely Construction Co. ("Kiely") at four locations in the State. Following an investigation by Board Staff, a number of alleged violations were discovered, and on July 18, 2005, Board Staff issued notices of alleged One-Call violations.

Upon notification of the alleged violations, Kiely and Board Staff entered into negotiations as to a possible settlement of the allegations. On January 19, 2006, a Stipulation of Settlement was entered into by Kiely and the Division of Law on behalf of the Board Staff.

This Stipulation of Settlement, attached as Appendix A, provides an agreement as to any and all claims arising from or related to these matters, and does not include an admission of guilt or liability on the part of Kiely. Kiely will provide a one-time payment of \$36,000 to the Treasurer of the State of New Jersey, in exchange for a full release by the Board.

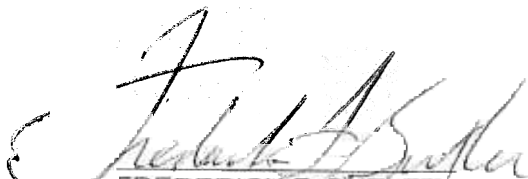
The Board has reviewed the Stipulation of Settlement and **HEREBY FINDS** it to be a reasonable settlement of the outstanding issues, in the public interest, in accordance with law and in accordance with the intent and purpose of the Underground Facilities Protection Act. Therefore, the Board **HEREBY ADOPTS** the Stipulation of Settlement as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

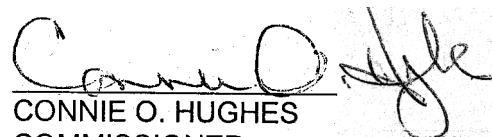
Accordingly, the Board HEREBY ORDERS Kiely to comply with the terms of the Stipulation and Settlement Agreement as presented.

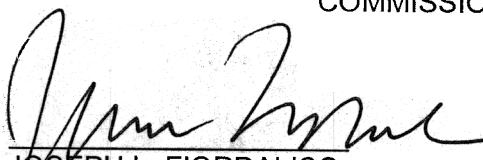
DATED: 2/2/06

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

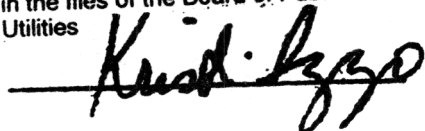

CONNIE O. HUGHES
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



SERVICE LIST

New Jersey Natural Gas Company
Craig Lynch
1415 Wyckoff Road
PO Box 1464
Wall, New Jersey 07719

Soden Electric
25 W. Highland Avenue
Atlantic Highlands, NJ

Petco Shopping Center
0 Wall Street
State Highway Rt. 35
Eatontown, NJ

Sterns & Wienroth
50 West State Street
Suite 1400
PO Box 1298
Trenton, NJ 08607-1298

J. F. Kiely Construction Company
700 McClellan Street
Long Branch, New Jersey 07740

James Giuliano, Director
Douglas R. Ziemba, Chief
Edward Lihan, Acting Bureau Chief
New Jersey Board of Public Utilities
Division of Reliability & Security
2 Gateway Center
Newark, New Jersey 07102

Kenneth J. Sheehan
Babette Tenzer
Deputy Attorneys General
State of New Jersey, Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

**IN THE MATTER OF ALLEGATIONS OF VIOLATIONS
OF LAW BY J.F. KIELY CONSTRUCTION CO.**

**GOC2005-0018
OC#63-05
OC#64-05
OC#65-05**

STIPULATION OF SETTLEMENT

This Stipulation of Settlement is hereby entered into on this 19th day of January, 2006 by and between the staff ("Staff") of the New Jersey Board of Public Utilities ("Board") and J. F. Kiely Construction Company ("J. F. Kiely").

WHEREAS, pursuant to the Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq., the Board has established the One-Call Damage Protection System for the Protection of underground facilities for use, among other things, in the conveyance of natural gas and thereby regulates and oversees the actions of contractors engaged in underground excavation work; and

WHEREAS, J. F. Kiely is a New Jersey utility contractor engaged in underground excavation work; and

WHEREAS, the Staff, on or about July 18, 2005, issued notices of alleged One-Call violations to J.F. Kiely arising out of work performed at the following locations: Two River Theater Company, 21 Bridge Avenue, Red Bank; 19 Buttonwood Lane, Rumson; Point Road School, Little Silver and Petco - 231 State Highway 35, Eatontown, New Jersey; and

WHEREAS, J.F. Kiely has denied and continues to deny all of the material allegations of the aforesaid alleged One-Call violations; and

WHEREAS, continued proceedings with respect to the adjudication of the these alleged violations would be expensive, time-consuming and complex, and their outcome uncertain; and

WHEREAS, the parties hereto desire to settle their dispute on the terms and conditions hereinafter set forth; and

WHEREAS, the resolution of this matter through this stipulation best serves the interests of the parties, supports judicial economy and is in the public interest.

NOW, THEREFORE, the parties hereto agree as follows:

1 J. F. Kiely shall pay by delivery of a check made payable to "Treasurer of the State of New Jersey" and delivered to Joseph J. Potena, Chief Fiscal Officer, Board of Public Utilities, 44 South Clinton Avenue, 7th Floor, P.O. Box 350, Trenton New Jersey 08625, the sum of Thirty-six Thousand dollars (\$36,000). A copy of this check shall be provided to Babette Tenzer, Deputy Attorney General, Department of Law and Public Safety, 124 Halsey Street, 5th Floor, Newark New Jersey 07101. The payment is made in exchange for the Board releasing and forever discharging J. F. Kiely, its officers, employees, agents and representatives, from any and all claims, demands or causes of action that were raised or asserted or which may have been raised or asserted in connection with the above described alleged violations, and with any One-Call Damage Prevention System mark-out request made by any J. F. Kiely employee on or before March 4, 2005.

2 The payment referred to in paragraph above shall be made within thirty (30) days after the date the Board enters an order approving this Stipulation of Settlement.

3 The parties understand and agree that this Stipulation of Settlement results from the compromise of disputed claims and that it and the consideration given for it are not intended to be and shall not be construed to be an admission of

wrongdoing, liability or fault or acknowledgment of non-compliance with any law on the part of J.F. Kiely.

4. Staff acknowledges that this Stipulation of Settlement, or any portion thereof, may not be used by Staff in any other proceeding, for any other purpose whatsoever, other than as required by the Board to enforce the terms set forth in this Stipulation of Settlement.

5. This Stipulation of Settlement is executed solely for the consideration above explained, and the parties understand that this Stipulation of Settlement, once approved by the Board, supersedes all prior promises, representations, understandings, negotiations and agreements. Neither party is entering into this Stipulation of Settlement in reliance upon any representation made to it by or on behalf of the other party hereto, except as expressly recited herein. Each party has carefully read this Stipulation of Settlement and has had an opportunity to discuss it with counsel, fully understands its contents, and understandings such, signs this Stipulation of Settlement as its own free act.

6. This Stipulation of Settlement and the terms, covenants, conditions, provisions, rights and benefits hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and assigns.

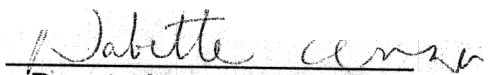
7. This Stipulation of Settlement may be executed in one or more counterparts, each of which shall be deemed to constitute an original. After such execution, this Stipulation of Settlement shall be presented to the Board for approval.

8. This Stipulation of Settlement shall be governed by and construed in accordance with the laws of the State of New Jersey.


9. This Stipulation of Settlement may be modified only by a written agreement executed and delivered by the parties. In the event the Board modifies any provision of this Stipulation of Settlement, absent express written consent of the parties, the Stipulation shall be void and the parties shall be restored to their positions prior to the execution of the Stipulation of Settlement.

IN WITNESS WHEREOF the parties hereto have affixed their respective signatures effective the date and year first above written.

~~PETER C. HARVEY~~ NANCY KAPLEN
ACTING ATTORNEY GENERAL OF THE STATE OF NEW JERSEY
ATTORNEY FOR STAFF OF THE BOARD

By: 
Title: Deputy Attorney General

J. F. KIELY CONSTRUCTION COMPANY

By: 
John M. Kiely

Title: President